

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

NOV 21 2006

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

CARLOS PACHECO,
Plaintiff,

v.

NORMAN MINETA,
SECRETARY OF
TRANSPORTATION, FEDERAL
AVIATION ADMINISTRATION,
Defendant.

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No. SA-02-CA-1087-RF

ORDER TAXING DEFENDANT'S BILL OF COSTS TO PLAINTIFF

BEFORE THE COURT is Defendant's Bill of Costs (Docket No. 91), filed May 23, 2006, Plaintiff's Objections (Docket No. 92), filed June 6, 2006, and Plaintiff's Supplemental Objections (Docket No. 98), filed September 6, 2006. The parties appeared for a hearing in this matter on September 14, 2006. For the reasons explained below, Defendant's request to tax costs against Plaintiff is GRANTED.

In a previous Order, this Court denied Defendant's request to assess costs against Plaintiff.¹ Defendant challenged this ruling by cross appeal to the Fifth Circuit, which held that, under Federal Rule of Civil Procedure 54(d)(1), "the losing party's good faith is alone insufficient to justify the denial of costs to the prevailing party."² The Fifth Circuit explained that Rule 54(d)(1) "contains a strong presumption that the prevailing party will be awarded

¹ Docket No. 87, filed October 27, 2004.

² *Pacheco v. Mineta*, 448 F.3d 783, 795 (5th Cir. 2006).

costs,” and the district court “may neither deny nor reduce a prevailing party’s request for costs without first articulating some good reason for doing so.”³

On remand, Plaintiff raises three objections to Defendant’s Bill of Costs. First, Plaintiff argues that a \$132.00 charge for the transcript of a hearing held in this Court on February 11, 2004 was “not necessarily obtained in defense of this suit” because the transcript “was not relevant to any issue in the case, and was not admissible in evidence.”⁴ Similarly, Plaintiff contends that a \$1,072.50 charge for the transcript of a two-day trial in *Boyd v. Mineta*, which involved the same defendant and identical issues, was “not relevant to the claims or defenses in this case, and was not admissible as evidence in this case.”⁵ Initially, the Court disagrees with Plaintiff’s hypothesis that a document is not necessary to litigation unless it is admissible in evidence. More importantly, however, it is clear that the trial transcript contained sworn testimony from key witnesses, and the hearing transcript contained statements by Plaintiff’s counsel, and instructions from this Court, that were relevant to Defendant’s preparation of a motion to dismiss.⁶ The Court is of the opinion that these costs were reasonably incurred for purposes of effective representation.

Finally, Plaintiff argues that 42 U.S.C. § 2000e-5(k) modifies Rule 54(d)(1) by providing that “in any action or proceeding under this subchapter the court, in its discretion,

³ *Id.* at 793-94.

⁴ Pl.’s Objections to Def.’s Bill of Costs (Docket No. 92), at 1.

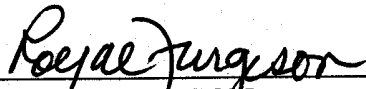
⁵ *Id.*

⁶ Def.’s Resp. to Pl.’s Objections (Docket No. 93).

may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person." Plaintiff argues that Defendant represents an agency of the United States, and therefore, "is not entitled to any costs as a prevailing party in this case."⁷ Section 2000e-5(k), however, plainly prohibits the United States from recovering attorney's fees, not costs. Thus, the Court does not agree that section 2000e-5(k) overrides Rule 54(d)(1).

Because Plaintiff has not articulated, nor does this Court find, a sound reason for denying or reducing costs to Defendant, it is hereby ORDERED that Defendant's Bill of Costs, in the amount of \$2,830.45, shall be taxed against Plaintiff.

Signed this 21st day of November, 2006.



ROYAL FURGESON
UNITED STATES DISTRICT JUDGE

⁷ Pl.'s Supp. Objections to Def.'s Bill of Costs (Docket No. 98), at 2.